IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 510 OF 1991

WITH

WRIT PETITION NO. 6423 OF 1996

WRIT PETITION NO. 510 OF 1991

Zahir Jahangir Vakil & Ors. .. Petitioners

vs.

Pune Municipal Corporation

& Anr. .. Respondents

Shri Mohan Pungalia for the petitioners.

Shri R.G. Ketkar for Respondent No.1

Shri Pradip Patil, AGP., for Respondent No. 2

WRIT PETITION NO. 6423 OF 1996

Shri Ramchandra Purushottam

Shirole & Ors. .... Petitioners.

vs.

Pune Municipal Corporation

& Ors. .. Respondents

Shri V.P. Sawant for the Petitioners

Shri R.G. Ketkar for Respondents 1 & 2.

CORAM : A.P.SHAH, &

S.U.KAMDAR, JJ.

DATE : 23rd December, 2004.

O**RAL JUDGMENT : (Per S.U. Kamdar, J.)**

. These two writ petitions raise a common question of law pertaining to the interpretation of section 126 of the Maharashtra Regional and Town Planning Act, 1966, particularly in context of the town planning scheme framed thereunder. Since both these petitions are raising a common question of law, we decided to dispose of the same by a common judgment.

Facts in Writ Petition No. 510 of 1991.

2. Under the provisions of the Bombay Town Planning Act, 1954 which has since been repealed, a declaration was made on 28.11.1958 declaring

intention to prepare development plan for the city of Pune. The draft development plan was thereafter submitted to the Government for its sanction.

. In 1965, the petitioners purchased the land bearing survey nos. 209/1, 209/2 and, 209/3 totally admeasuring about 10 acres and 35 gunthas equivalent to 4 Hecters and 21 Ares. The said land was situated at Yeravada Town, Nagar Road, within the district of Pune. A sale deed in favour of the petitioner for the said land was executed and registered on 30.3.1970. On 15.8.1966, the draft development plan prepared under the then provisions of the Bombay Town Planning Act, 1954 was sanctioned. Under the said sanctioned plan the plot of land bearing survey no. 209 of an area admeasuring about 8732.90 sq.mtrs forming part of District Yerawada was earmarked for a High School.

3. On 11.01.1967, the provisions of the Bombay Town Planning Act, 1954 were repealed and a new Act known as Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the said Act) has been enacted and brought in force. The

repealing provisions under section 165 of the said Act inter alia provided that notwithstanding the repeal of the provisions of the Bombay Town Planning Act, 1954 anything done or any action taken (including any declaration of intention to make a development plan or town planning scheme, any draft development plan or scheme published by a local authority) shall be saved and shall be deemed to have been done or taken under the corresponding provisions of the said Act.

. On 10.9.1982, original sanctioned development plan which was for a period of 10 years, expired. However, no steps were taken by the planning authority to acquire the said land of the petitioners for the reservation of High School which was provided for under the said development plan. On 18.9.1982, a draft revised development plan was published and the said land was continued to be reserved thereunder now for primary school.

. On 10.6.1985, the petitioner served a purchase notice under section 127 of the said Act calling upon the respondents to either acquire the said

land by an agreement or delete the reservation from the development plan. It was stated in the said notice that inspite of a period of 18 years having been expired from the sanctioned plan neither the said land is acquired nor the petitioner is permitted to develop the same. On 16.09.1985, the Planning Authority replied to the petitioners inter alia stating therein that the land cannot be released under section 127 of the said Act because the ownership of the land is already vested with the State Government and, therefore, no action can be initiated under the provisions of the said Act. On 5.1.1987, a revised development plan was published once again inter alia indicating the designated use of the said property for primary school from Sector I to VI in accordance with the decision of the Pune Municipal Corporation. On 02.02.1988, the petitioner made a proposal to the Planning Authority to construct primary school at their own costs and permit them to develop the balance land for commercial/residential purposes. On 29.9.1988, the petitioner once again repeated their proposal to the Urban Development Department of the Government of Maharashtra. However, they

were directed to contact the Pune Municipal Corporation. On 21.11.1988, the Planning Authority i.e. the Pune Municipal Corporation informed the petitioners that they will continue the reservation of the land and will not permit the petitioners to develop the same. In view of an unsuccessful attempt to get the said land released for development the petitioners filed the present petition inter alia seeking relief from this Court that the plot of the petitioners should be released from the said reservation and/or in the alternative the petitioners should be permitted to develop the said plot of land for construction of the primary school in accordance with the reservation.

4. There are certain facts which are not set out in necessary details in the present petition and which are crucial for the determination of the present case, are briefly enumerated hereunder.

5. In respect of the said survey nos. 209/1/, 209/2 and 209/3 which was the original plot of the petitioners herein, a town planning scheme was prepared known as Town Planning Scheme Yeravada No.

I. A draft town planning scheme was published under the provisions of section 61 of the said Act. An arbitrator was appointed to determine the rights of the parties whose plots were covered under the scheme. In fact, the petitioners participated before the said arbitrator for determination of their holding and/or payment of betterment charges and/or compensation to the petitioners. On 14.8.1974 the petitioners were heard by the Arbitrator and after hearing, the arbitrator has passed his award. Under the said Award, the said original plots of land bearing survey No. 209/1/, 209/2/ and 209/3 were merged and was given a revised plot number. Out of the said revised plot no. 77 two plots are carved out namely final plot no. 75 and 76. The said final plot no. 75 is reserved for high school under the Town Planning Scheme No. I Yerawada and the final plot no. 76 of an area admeasuring about 3 hectors 96.28 Ares was allotted to the petitioner in substitution of his original plot of land.

. The said scheme has been sanctioned by the Government on 22.4.1983 and sanction was published

in Maharashtra Government Gazette on 9.6.1983. The said scheme has been brought into effect with effect from 15.7.1983. Under the said scheme, an award has been published by the arbitrator inter alia indicating that the original plot no. 77 of the petitioner was substituted by allotment of the final plot no. 76. The original area of the land holding of the petitioner of 4 hectors, 41 ares has been reduced to the area of 3 hectors 96.26 ares. After taking into consideration the betterment charges and the compensation payable to the petitioner for reduction in the area (which reduction is due to reservation of the final plot no. 75 for primary school) the arbitrator has awarded that there is payable by the petitioner to the Pune Municipal Corporation a sum of Rs. 61,812/- The arbitrator while computing the aforesaid figure has taken the market value of the original plot of land and the market value of final plot of land as undeveloped as well as developed respectively and after computing the compensation payable to the petitioner for the loss of area has arrived at the aforesaid figures.

. An appeal was preferred by the petitioners to the Appellate Tribunal which was constituted under the Civil Judge Senior Division, Pune who has by his order dated 10.11.1976 rejected the appeal of the petitioners herein.

6. The respondent Corporation has filed an affidavit and has inter alia pointed out that the petitioner had appeared before the Arbitrator and after hearing him, the computation has been carried out. In the said affidavit the basis of determination of the market value of the land of original plot of land and final plot of land is also set out. It is further contended that the petitioner has not disclosed the aforesaid developmenmts which are important for the adjudication of thepresent petition. Lastly the affidavit states that in view of sanction of the town planning scheme thesaid land is vested in the government without any encumberances and thus the present petition is without any merits.

. The petitioners have in the aforesaid background of the facts claimed that the provisions of section

126 applies to the land earmarked or reserved for any public purpose either under the Development plan and/or under a town planning scheme. Once the said section applies then in that event the said land cannot be acquired for any public purpose without payment of compensation as contemplated under the Land Acquisition Act, 1894 read with section 126 (3) of M.R.T.P. Act, 1966.

Facts in Writ Petition No.6423 of 1996.

7. In 1922 a draft scheme was published for an area known as Shivaji Nagar of District Pune. The said scheme was varied in 1934.

8. In 1961, the Corporation as a Special Planning Authority decided to take over the land for construction of two parallel roads, namely, the roads connecting Modal Colony area to Pune University Road. On 29.7.1961 a notification was issued under section 4 of the Land Acquisition Act 1894 for acquiring one out of the two plots of land required for parallel roads. It is the case of the petitioner that the said acquisition was resorted

to because of the owners of the said portion of the land refused to deliver the possession of the property voluntarily to the Corporation for the purposes of construction of the said road. The said portion of the land was urgently required to be earmarked. Since some of the newly formed plot had no accesses. In 1963, the owner of the land bearing city survey no. 1111 of Shivaji Nagar which is the subject matter of the present petition handed over possession of the said land to the Corporation for construction of the road under the town planning scheme. The portion of the land which was handed over was admeasuring about 6991 sq. ft. Sometime in or about 1967 the provisions of the said MRTP Act, 1966 were introduced and brought into effect by replacing the earlier provisions of law known as Bombay Town Planning Act, 1954.

. In respect of the said area of the land ultimately a Town Planning Scheme was finalised and on 13.4.1992 an arbitrator passed an award providing for part of the land of the petitioner to be reserved for the road. In 1979, the said Town

Planning Scheme No. I was varied. Ultimately, in the finalised Scheme a merger of final plot no. 485 D/1 into final Plot No. 486 was provided for.

. On 24.4.1995, Pune Municipal Corporation refused an application for grant of FSI for an area of 6991 sq.ft. which was surrendered for the construction of the road under the said Town Planning Scheme. The petitioner thereafter moved an application to the State Government under Section 448 of the Bombay Provincial Municipalities Act, 1949 read with Section 157 of the said Act, inter alia seeking prayers that the Pune Municipal Corporation be directed to execute suitable agreement in accordance with the provisions of Section 157 of the of the said Act and allow the petitioner an additional FSI of an area of 6991 sq. ft. which was taken over for the construction of the road. The said application came to be rejected by an order dated 9.4.1996 in which it has been inter alia stated that the land which was forming part of the final plot in the town planning scheme has been taken into consideration while fixing the compensation/betterment charges under the

provisions of the said scheme and, therefore, the petitioner is not entitled to any further compensation either in terms of the money or in terms of grant of additional FSI as claimed by the petitioner herein. It is this order of 9.4.1996 which is the subject matter of challenge in this writ petition.

RIVAL CONTENTIONS

9. Both the learned counsel have before us strenously argued that the petitioners are entitled to the compensation for loss of land under the town planning scheme by virtue of the provisions of section 126 of the said Act. It has been contended by the learned counsels appearing for the parties that the properties which are lost in reorganisation of the plot under the Town Planning Scheme cannot be taken over by the State or the Planning Authority being the Pune Municipal Corporation free of cost. It has been urged that such a provision would be confiscatory in nature and would be violative of the petitioners fundamental rights as also cannot stand scrutiny of

rule of law. It was urged that it is a settled law that no person could be deprived of his property without giving any compensation whatsoever under the provisions of the Act and such a provision would be ultra vires. On the basis of the aforesaid argument, we are called upon to interpret provisions of section 126 of the said Act to hold that in fact for the loss of property in reorganisation of the plot under the Town Planning Scheme, the State Government is bound to acquire the same by following procedure prescribed under Section 126 of the said Act. It was thus contended that it is only this interpretation that would save such confiscatory legislation by which the rights of the petitioners in the property are sought to be extinguished without payment of any money whatsoever.

10. It has been further argued by the learned counsel on behalf of both the petitioners that the words contained under section 126 of the Town Planning Act includes even those cases where the land is reserved under the Town Planning Act and once the words 'town planning schemes' are

incorporated under the provisions of Section 126 of the said Act then it is incumbent upon the Government under section 126 (2) and (3) of the said Act to follow the provisions of Land Acquisition Act from the stage of section 6 declaration. Alternatively, it has been contended by the learned counsel for the petitioner that if we hold that the provisions of section 126 have no application in so far as the Town Planning Schemes are concerned, then in that event, it will result in arbitrary and/or discriminatory conclusions in as much as under the Town Planning Act, 1966 itself where land is reserved for any of the public purposes under the development plan, such a person will be entitled to benefits of sub-section (2) of Section 126 and consequently the benefits conferred under the Land Acquisition Act which inter alia includes the claim for solatium, interest and other compensation whereas a person whose land is reserved for public purpose under the Town Planning Scheme will be deprived of such benefits by virtue of those acquisition not being incorporated under the provisions of section 126. It has been thus urged before us that such would be an arbitrary and

discriminatory treatment to the two different persons similarly situated and such an interpretation of section 126 would make it vulnerable to challenge under section 14 of the Constitution of India. Thus, we were once again called upon by the learned counsel for the petitioner to interpret section 126 in a manner which saves its constitutional validity rather than make the same vulnerable to constitutional challenge. The learned counsel therefore respectfully submitted that though there can be a provision of reservation and/or compensation under the Town Planning Scheme of any portion of the land by the State Government still, for the purposes of compensation, the State Government would be duty bound to follow the procedure prescribed under section 126 (2) of the said Act and cannot avoid his obligation to pay compensation as prescribed under the Land Acquisition Act by virtue of sub section (2) of Section 126 of the said Act. The learned counsel appearing in Writ Petition No. 6423 of 1996 has further contended that in view of the fact that the petitioner is entitled to compensation for the loss of land for road widening

under the Town Planning Scheme and the Development Control Regulations for the City of Pune, permit grant of FSI in lieu of such compensation, the respondents should be directed to give the petitioner the FSI in lieu of compensation or loss of area in road widening under the Town Planning Scheme. Thus, he contended that he is entitled to the benefits of the FSI which have been wrongfully rejected by the State Government under the impugned order.

12. It was further contended by both the learned counsels for the petitioner that the vesting provided under section 88 (a) of the said Act of 1966 on final scheme being sanctioned by the State Government would be subject to the computation of compensation as contemplated under section 126 (2) and 3 of the said Act. In other words, it was contended by the learned counsel for the petitioner that there was no absolute vesting of the land under section 88 (a) of the said Act but such vesting provided thereunder is a conditional vesting on payment of compensation as contemplated under the provisions of section 126 (2) and (3) of

the Act of 1966. It was further contended that the absolute vesting will arise only when a computation of the compensation payable under section 126 (2) and (3) of the said Act of 1966 is made and paid over to the petitioner in pursuance of the acquisition of their land under the Town Planning Scheme.

13. On the other hand, the learned counsel for the respondent Corporation has contended that the Town Planning Scheme is a scheme by itself and for the purpose of compensation there is an inbuilt mechanism within the provisions of the framing of the same scheme. He, therefore, contended that for an area acquired or loss of area under the scheme the petitioners are not entitled for compensation under section 126 of the said Act and, therefore, the question of resorting to Land Acquisition Act by relying upon section 126 (2) of the said Act cannot and does not arise. The learned counsel for the respondent has further contended that the scheme having been sanctioned by the State Government has become final and the properties which are forming part of the said Scheme in terms

of the said scheme vests in the State Government. He, therefore, contended that once there is a vesting in favour of the State Government then the land is vested free of all encumbrances and the title of the petitioner in the said land is divested. He, therefore, contended that the contentions raised by the petitioner that the said property is being acquired as a confiscatory measure is not true and correct argument. He contended that in fact the provisions of the said Act which permits the finalisation of the Town Planning Scheme provides for an inbuilt computation of the market value of the land lost by the plot holders after giving the set off towards the betterment charges in respect of the plot allotted to them. After giving the aforesaid set-off the balance is arrived at as payable or receivable by the Pune Municipal Corporation and, therefore, he contended that the argument of the learned counsel for the petitioners that the said legislation would tantamount to be a confiscatory legislation has no substance and thus urged us to reject the same.

. The learned counsel appearing in Writ Petition

No. 6423 of 1996 has advanced an additional argument in support of his petition that in his case there is a discrimination by and between the two plot holders under the said Town Planning Scheme as in respect of the same plot holder under the scheme the acquisition is resorted to under the provisions of the Land Acquisition Act and compensation computed and paid over whereas in the case of the petitioner the land is not acquired under the Land Acquisition Act but the said land is sought to be acquired under the provisions of the Town Planning Scheme. It was thus contended by the learned counsel for the petitioner in the said petition No. 6423 of 1996 that there cannot be two modes of acquisition for acquiring the property under the said scheme. It was contended that by virtue of the said discriminatory provisions some of the persons are more benefited by resorting to Land Acquisition Act whereas the others are not so benefited by virtue of providing for compensation within the sanctioned Town Planning Scheme. It was thus urged by the learned counsel for the petitioners that the said action on the part of the respondent Corporation to treat two plot holders

differently is arbitrary and consequently the action of acquisition of the petitioners property under the Town Planning Scheme is liable to be quashed and set aside.

14. The learned counsel appearing in the other writ petition being Writ Petition No. 510 of 1991 has further contended that as and by way of additional argument that in his case there was reservation on the plot of land for the primary school as far back as 1967. He has thereafter contended that the said reservation was continued even in the subsequently revised development plan whereas in the case of a town planning scheme the reservation prescribed and/or appearing has been in respect of the primary school and partly for other purposes. Thus, the learned counsel has contended on behalf of the petitioner in the said writ petition that by virtue of the reservation being contained under the development plan, the State Government and/or the respondent Corporation were bound and liable to acquire the said property in accordance with the reservation provided under the development plan and consequently resorting to the

provisions of section 126 of the said Act of 1966. He, therefore, contended that the acquisition sought to be effected by virtue of the revision in the town planning scheme is illegal and unlawful. It is further contended that the acquisition by method of town planning scheme in disregard to the provisions of section 126 of the said Act, 1966 is illegal and unlawful and, therefore, he contended that the said acquisition proceedings be quashed and set aside.

15. Before dealing with the rival submissions between the parties and the authorities relied upon in support of the aforesaid contentions, it has become necessary to set out certain provisions of the said Act which require interpretation in the present petition.

LEGAL PROVISIONS

16. Section 2 (9) defines the development plan. Sections 30 and 31 provide for a draft development plan and sanction to the draft development plan.

"2(9) "Development plan" means a plan for the development or re-development of the area within the jurisdiction of a Planning Authority and includes revision of a development plan and proposal of a special planning Authority for development of land within its jurisdiction;"

"30. Submission of draft-Development Plan.--(1) The Planning Authority or as the case may be, the said Officer shall submit the draft-Development Plan to the State Government for sanction within a period of twelve months from the date of publication of the notice in the Official Gazette regarding its preparation under section 26;

Provided that, the State Government may, on an application by a Planning Authority or the said Officer by an order in writing, and for adequate reasons which should be recorded, extend from time to time the said period by such further period as may be specified in the order but not in any case exceeding

twenty-four months in the aggregate.

(2) The particulars referred to in sub-section (2) of section 26 shall also be submitted to the State Government."

"31. Sanction to draft-Development Plan.--(1) Subject to the provisions of this section, and not later than one year from the date of receipt of such plan from the Planning Authority, or as the case may be, from the said Officer, the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette sanction the draft-Development Plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft-Development plan to the Planning Authority or as the case may be, the said Officer for modifying the plan as it may direct, or refuse to accord sanction and direct the Planning Authority or the said

Officer to prepare a fresh Development plan;

Provided that, the State Government may, if it thinks fit, whether the said period has expired or not, extend from time to time, by a notification in the Official Gazette, the period for sanctioning the draft Development plan or refusing to accord sanction thereto, by such further period as may be specified in the notification;

Provided further that, where the modifications proposed to be made by the State Government are of a substantial nature, the State Government shall publish a notice in the Official Gazette and also in local newspapers inviting objections and suggestions from any person in respect of the proposed modification within a period of sixty days from the date of such notice.

(2) The State Government may appoint an officer of rank not below that of a Class I officer and direct him to hear any such person

in respect of such objections and suggestions and submit his report thereon to the State Government.

(3) The State Government shall before according sanction to the draft-Developmnt plan take into consideration such objections and suggestions and the report of the officer.

(4) The State Government shall fix in the notification under sub-section (1) a date not earlier than one month from its publication on which the final Development plan shall come into operation.

(5) If a Development plan contains any proposal for the designation of any land for a purpose specified in clauses (b) and (c) of section 22, and if such land does not vest in the Planning Authority, the State Government shall not include that in the Development plan, unless it is satisfied that the Planning Authority will be able to acquire such land by private agreement or compulsory acquisition

not later than ten years from the date on which the Development plan comes into operation.

(6) A Development plan which has come into operation shall be called the "final Development plan which has come into operation shall be called the "final Development plan" and shall, subject to the provisions of this Act,be binding on the Planning Authority."

14. The provisions of Town Planning Scheme are covered under Chapter V of the said Act. Section 59 provide for preparation and contents of the Town Planning Scheme. The said section reads as under :

"59. Preparation and contents of Town Planning Scheme.--(1) Subject to the provisions of this Act or any other law for the time being in force--

(a) a Planning Authority may for the purpose of implementing the proposals in the final Development plan, prepare one or more town

planning schemes for the area within its jurisdiction, or any part thereof;

(b) a town planning scheme may make provision for any of the following matters, that is to say--

(i) any of the matters specified in section 22;

(ii) the laying out or re-laying out of land, either vacant or already built upon, including areas of comprehensive development;

(iii) the suspension, as far as may be necessary for the proper carrying out of the scheme, of any rule, by law, regulation, notification or order made or issued under any law for the time being in force which the Legislature of the State is competent to make;

(iv) such other matter not inconsistent with the object of this Act, as may be directed by the State Government.

(2) In making provisions in a draft town planning scheme for any of the matters referred to in clause (b) of sub-section (1), it shall be lawful for a Planning Authority with the approval of the Director of Town Planning and subject to the provisions of section 68 to provide for suitable amendment of the Development Plan.

Section 61 of the Act provide for publication of a draft scheme. The said section 61 reads as under :-

61. Making and publication of draft scheme by means of notice.-- (1) Not later than twelve months from the date of the declaration, subject however, to sub-section (3), the Planning Authority shall in consultation with the Director of Town Planning, make a draft scheme for the area in respect of which the declaration was made, and published a notice in the Official Gazette and in such manner as

may be prescribed stating that the draft scheme in respect of such area has been made. The notice shall state the name of the place where a copy thereof shall be available for inspection by the public and shall state that copies hereof or any extract therefrom certified to be correct shall be available for sale to the public at a reasonable price.

(2) If the Planning Authority fails to make a draft scheme and publish a notice regarding its making within the period specified in sub-section (1) or within the period extended under sub-section (3), the declaration shall lapse, unless the State Government appoint an Officer to prepare and submit the draft scheme to the State Government on behalf of the Planning Authority not later than twelve months from date of such appointment or the extended period under sub-section (3); but any such lapse of declaration shall not debar the Planning Authority from making a fresh declaration any time in respect of the same area.

(3) The State Government may, on application made by the Planning Authority, or, as the case may be, the officer, from time to time by notification in the Official Gazette extend the period specified in sub-section (1) or (2) by such period not exceeding six months as may be specified in the notification.

Section 64 provides for contents of a draft scheme.

Said section reads as under :

"64. Contents of draft scheme.-- A draft scheme shall contain the following particulars so far as may be necessary, that is to say, --

(a) the ownership, area and tenure of each original plot;

(b) reservation, acquisition or allotment of land required under sub-section (1) of clause (b) of section 59 with the general indication of the uses to which such land is to be put and the terms and conditions subject to which,

such land is to be put to such uses;

(c) the extent to which it is proposed to alter the boundaries of the original plots by reconstitution;

(d) an estimate of the total cost of the scheme and the net cost to be borne by the Planning Authority;

(e) a full description of all the details of the scheme with respect of such matters referred to in clause (b) of section 59 as may be applicable;

(f) the laying out or re-laying out of land either vacant or already built upon including areas of comprehensive development;

(g) the filing up or reclamation of low lying, swamp or unhealthy areas or levelling up of land;

(h) any other prescribed particulars.

Section 65 provides reconstitution of plots under the town planning scheme and the said section 65 reads as under:-

> "65. Reconstituted plot.-- (1) In the draft scheme, the size and shape of every reconstituted plot shall be determined, so far as may be, to render it suitable for building purposes, and where a plot is already built upon, to ensure that the buildings as far as possible comply with the provisions of the scheme as regards open spaces.
>
> (2) For the purpose of sub-section (1), a draft scheme may contain proposals,--
>
> (a) to form a final plot by reconstitution of an original plot by alteration of the boundaries of the original plot, if necessary;
>
> (b) to form a final plot from the original plot by the transfer wholly or partly of the

adjoining lands;

(c) to provide, with the consent of the owners, that two or more original plots each of which is held in ownership in severally or in joint ownership shall hereafter, with or without alteration of boundaries, be held in ownership in common as a final plot;

(d) to allot a final plot to any owner dispossessed of land in furtherance of the scheme; and

(e) to transfer the ownership of an original plot from one person to another.

The provisions of Section 67 provide for a owner of the plot to file an objection to the draft planning scheme which is at the consideration stage. The said section 67 stipulates as under:-

"67. Objections to draft scheme to be considered.-- If within thirty days from the

date of the publication of notice regarding the preparation of the draft scheme, any person affected thereby communicates in writing any objection relating to such scheme, the Planning Authority or the officer appointed under sub-section (2) of section 61 or section 63 shall consider such objection and may, at any time before submitting the draft scheme to the State Government as hereinafter provided, modifying such scheme as it or he thinks fit.

Section 68 of the Act provides for the power of the State Government to sanction the draft scheme.

Said section 68 reads as under :-

"68. Power of State Government to sanction draft scheme.--(1) The Planning Authority or as the case may be, the officer aforesaid shall, not later than six months from the date of the publication of the notice in the Official Gazette regarding the making of the draft scheme, submit the same with any

modifications which it or he may have made therein together with a copy of objections received by it or him to the State Government, and shall at the same time apply for its sanction.

(2) On receiving such application, after making such inquiry as it may think fit and consulting the Director of Town Planning, the State Government may, not later than six months from the date of its submission, notification in the Official Gazette or not later than such further time as the State Government may extend, either sanction such draft scheme with or without modifications and subject to such conditions as it may think fit to impose or refuse to give sanction.

(3) If the State Government sanctions such scheme, it shall in such modification state at what place and time the draft scheme shall be open to the inspection of the public and the State Government shall also state therein that copies of the scheme or any extract therefrom

certified to be correct shall on application be available for sale to the public at a reasonable price."

Under section 72 of the Act, an arbitrator is required to be appointed once the State Government has granted sanction to the draft scheme and is published in the official gazette. The arbitrator thereafter is required to compute the compensation for the purpose of receiving the same from the plot owner if they have been beneficiary under the scheme by way of additional area or by way of developed plot of land and/or to pay the owners if they have been deprived of their rights in respect of their original plots. The said section 72 reads as under :-

"72. Arbitrator; his powers and duties.--(1) Within one month from the date on which the sanction of the State Government to the draft scheme is published in the Official Gazette, the State Government shall for purposes of one or more planning schemes received by it for sanction appoint any person possessing such

qualifications as may be prescribed to be an Arbitrator with sufficient establishment and his duties shall be as hereinafter provided.

(2) The State Government may, if if thinks fit at any time, remove for incompetence or misconduct or replace for any good and sufficient reason an Arbitrator appointed under this section and shall forthwith appoint another person to take his place and any proceeding pending before the Arbitrator immediately before the date of his removal or replacement shall be continued and disposed of by the new Arbitrator appointed in his place.

(3) In accordance with the prescribed procedure, every Arbitrator shall,--

(i) after notice given by him in the prescribed manner define, demarcate and decide the areas allotted to, or reserved for the public purpose or purposes of the Planning Authority, and also the final plots;

(ii) after notice given by him in the prescribed manner, decide the person or persons to whom a final plot is to be allotted; and when such plot is to be allotted to persons in ownership in common, decide the shares of such persons;

(iii) estimate the value of and fix the difference between the values of the original plots and the values of the final plots included in the final scheme, in accordance with the provisions contained in clause (f) of sub-section (1) of section 97;

(iv) estaimate the compensation payable for the loss of the area of the original plot in accordance with the provisions contained in clause (f) of sub-section (1) of section 97 in respect of any original plot which is wholly acquired under the scheme;

(v) determine whether the areas allotted or reserved for the public purpose or purposes of the Planning authority are beneficial wholly

or partly to the owners or residents within the area of the scheme;

(vi) estimate the proportion of the sums payable as compensation on each plot used, allotted or reserved for the public purpose or purposes of the Planning authority which is beneficial partly to owners or residents within the area of the scheme and partly to the general public, which shall be included in the costs of the scheme;

(vii) determine the proportion of contribution to be levied on each plot used, allotted or reserved for the public purpose or purposes of the Planning Authority which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public;

(viii) determine the amount of exemption, if any, from the payment of the contribution that may be granted in respect of plots or portions thereof exclusively used or occupied for

religious or charitable purposes at the date of which the final scheme is drawn up under clause (xviii) of this sub-section;

(ix) estimate the value of final plots included in the final scheme and the increment to accrue in respect of such plots in accordance with the provisions of section 98;

(x) calculate the proportion in which the increment in respect of the final plots included in the final scheme shall be liable to contribution to the cost of the scheme in accordance with the previsions contained in section 97;

(xi) calculate the contribution to be levied on each final plot included in the final scheme; (xii) determine the amount to be deducted from or added to, as the case may be, the contribution leviable from a person in accordance witht he provisions contained in section 10;

(xiii) provide for the total or partial transfer of any right in an original plot to a final plot or provide for the extinction of any right in the original plot in accordance with the provisions contained in section 101;

(xiv) estimate the amount of compensation payable under section 66;

(xv) where a plot is subject to a mortgage with possession or a lease, decide the proportion of compensation payable to or contribution payable by the mortgagee or lessee on one hand and mortgagor or lessor on the other.

(xvi) estimate in reference to claims made before him, after the notice given by him in the prescribed manner, the compensation to be paid to the owner or any property of right injuriously affected by the making of a town planning scheme in accordance with the provisions contained in section 102;

(xvii) determine the period in which the works provided in the scheme shall be completed by the Planning Authority;

(xviii) draw in prescribed form the final scheme in accordance with the draft scheme;

Provided that--

(a) he may make variations from the draft scheme;

(b) he may with the previous sanction of the State Government after hearing the Planning Authority and any owners who may raise objections make substantial variations in the draft scheme.

Explanation.-- For the purpose of sub-clause (b) of this proviso, "substantial variation" means increase in the total cost of the draft scheme by more than 20 per cent or two lacs of rupees whichever is higher, on account of the provisions of new works or the reservation of

additional sites for public purposes included in the final scheme drawn up by the Arbitrator.

(4) The Arbitrator shall decide all matters referred to in sub-section (3) within a period of twelve months from the date of his appointment, and in the case of an Arbitrator appointed under the Bombay Town Planning Act, 1955 (Bom. I of 1915) or a Town Planning Officer appointed under the Bombay Town Planning Act, 1954, (Bombay XXVI of 1955) whose appointment is continued under section 165), within a period of twelve months from the date of the commencement of this Act;

Provided that, the State Government may, if it thinks fit, whether the said period has expired or not, and whether all the matters referred to in sub-section (3) have been decided or not, extend from time to time by a notification in the Official Gazette the period for deciding all matters referred to in that sub-section (3) or any extended period

therefor."

An appeal is provided against the order of the arbitrator under section 74 of the Act. Section 74 reads as under.

"74. Appeal.-- (1) Any decision of the Arbitrator under clauses (iv) to (xi) both inclusive and clauses (xiv), (xv) and (xvi) of sub-section (3) of section 72 shall be forthwith communicated to the party concerned including the Planning Authority; and any party aggrieved by such decision may within two months from the date of communication of the decision, apply to the Arbitrator to make a reference to the Tribunal of Appeal for decision of the Appeal.

(2) The provisions of sections 5, 12 and 14 of the Indian Limitation Act, 1963 (36 of 1963) shall apply to appeals submitted under this section."

Under section 86 of the Act, the State Government requires to give the sanction to the final scheme aas finalised by the Arbitrator within a period of four months from the date of the receipt of the final scheme from him. The said section 86 reads as under :-

> "86. Sanction by State Government to final scheme.--(1) The State Government may, within a period of four months from the date of receipt of the final scheme under section 82 from the Arbitrator or within such further period as the State Government may extend, by notification in the Official Gazette, sanction the scheme or refuse to give such sanction provided that in sanctioning the scheme the State Government may make such modifications as may in its opinion be necessary, for the purposes of correcting an error, irregularity or informality.
>
> (2) If the State Government sanctions such scheme, it shall state in the notification--

(a) the place at which the final scheme is kept open to inspection by the public and also state therein that copies of the scheme or extracts therefrom certified to be correct shall on application, be available for sale to the public at a reasonable price;

(b) a date (which shall not be earlier than one month after the date of the publication of the notification) on which all the liabilities created by the scheme shall take effect and the final scheme shall come into force;

Provided that, the State Government may, from time to time, postpone such date, by notification in the Official Gazette, by such period, not exceeding three months at a time as it thinks fit.

(3) On and after the date fixed in such notification, a town planning scheme shall have effect as if it were enacted in this Act.

Section 88 provides for effect of the final

sanctioned scheme and the provisions of section 88 reads as under :-

"88. Effect of final scheme.-- On and after the day on which a final scheme comes into force --

(a) all lands required by the Planning Authority shall, unless it is otherwise determined in such scheme, vest absolutely in the Planning Authority free from all encumbrances;

(b) all rights in the original plots which have been reconstituted shall determine, and the reconstituted plots shall become subject to the rights settled by Arbitrator;

(c) the Planing Authority shall hand over possession of final plots to the owners to whom they are allotted in the final scheme.

.Thereafter we come to the provisions of

section 126 of the said Act which is the subject matter of interpretation in the present petition. However, before setting out section 126 it is necessary to consider the placement of the said provisions under the scheme of the Act. This provision falls under Chapter VII. The said Chapter VII comprises of Sections 125 to 129 of the said Act. These provisions appears are after the provisions for Development Plan and the provisions of the Town Planning Scheme under the said Act. In our view, the provisions of Sec. 125 tro S.129 forms a part of one scheme pertaining to acquisition and/or lapse of reservation of the property which are earmarked for public purpose. For the purposes of the present petition, it is suffice to reproduce the provisions of sections 125, 126 and 127 of the said Act which read as under :-

"125. Compulsory acquisition of land needed for purposes of Regional plan, Development plan or town planning scheme, etc.-- Any land required, reserved or designated in a Regional

Plan, Development Plan or town planning scheme for a public purpose or purposes including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (I of 1894)."

"126. Acquisition of land required for public purposes specified in plans.-- (1) When after the publication of a draft Regional plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority, or as the case may be, any appropriate Authority may, except as otherwise provided in section 113-A, acquire the land --

(a) by an agreement by paying an amount agreed to or,

(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Land Acquisition Act, 1894 Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894,

and the land (together with the amenity, if any, so developed or constructed so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or under the Land Acquisition Act, 1894, as the case may be, shall vest in the Planning Authority, Development Authority, or as the case may be, any Appellate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or [if the State Government (except in cases falling under section 49 and except as provided in section 113-A] itself is of opinion that any land in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894, (I of 1894), in respect of the said land. The declaration so published shall,

notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section;

[Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.]

(3) On publication of a declaration under the said section 6, the Collector shall proceed to take order for the acquisition of the land under the said Act, and the provisions of that Act shall apply to the acquisition of the said land, with the modification that the market value of the land shall be --

(i) where the land is acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constitutiting or declaring the

Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as an undeveloped area; and

(iii) in any other case the market value on the date of publication of the interim development plan, the draft development plan, or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft town planning scheme.

Provided that, noting in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planing (Second Amendment) Act, 1972 (Mah. XI of 1973).

Provided further that for the purpose clause

(ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under sub-section (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 (Mah. XI of 1973) shall be the market value prevailing on the date of such commencement.

(4) [Notwithstanding anything contained in the proviso to sub-section (2) and in sub-section (3), if a declaration] is not made within the period referred to in sub-section (2) or having been made, the aforesaid period expired at the commencement of the Maharashtra Regional Town Planning (Amendment) Act, 1993, (Mah. X of 1994) the State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 1894, (I of 1894) in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official

Gazette made for acquiring the land afresh]."

LEGAL HISTORY

15. Before interpreting the aforesaid provisions of law and dealing with the contentions of both the parties before us, it would be relevant to note that prior to the provisions of the said Act being introduced and brought into effect i.e. on 11.01.1967 the provisions of the Bombay Town Planning Act, 1954 were in operation. With the introduction of the said Act though the provisions of the Bombay Town Planning Act, 1954 stood repealed however by saving clause under section 165 it was provided that notwithstanding the repeal of the said Act, anything done or any action taken under the erstwhile provisions i.e. Bombay Town Planning Act, 1954 will be saved and will continue under the provisions of the replacing Act as if the same are initiated thereunder.

16. Comparing the provisions of both the Bombay Town Planning Act, 1954 and the provisions of the said Act, we find that they are in pari materia

similar to each other save and except that the provisions of section 126 of the said Act did not form part of the earlier legislation i.e. Bombay Town Planning Act, 1954. In other words, the provisions of Section 126 of the said Act have been introduced for the first time in the said MRTP Act, 1966. Provisions of both the Act provided for reservation either by the method of development plan and/or by reorganisation of the plots or providing specific reservation under the Town Planning Scheme. The provisions of Section 126 under the existing MRTP Act, 1966 has included the acquisition by method of land acquisition even in respect of the property reserved under the Town Planning Scheme. Save and except the aforesaid change, we do not see any material difference by and between the original provision of the Bombay Town Planning Act, 1954 and the MRTP Act, 1966.

REASONING

. The provisions of the Bombay Town Planning Act came up for consideration before the Hon’ble Supreme Court of India in the case of State of

Gujarat vs. Shantilal Mangaldas and others, reported in AIR 1969 SC 634 and argument which was advanced therein was similar to the argument advanced herein for computation of compensation under the provisions of the Land Acquisition Act and/or Town Planning Act. It was argued therein that an option given to the authority to adopt either of the modes of acquisition would be arbitrary and bad in law. While repealing the said argument, the Hon'ble Supreme Court has in the aforesaid judgment held as under :

> "54. One more contention which was apparently not raised on behalf of the first respondent before the High Court may be briefly referred to. Counsel contends that Ss. 53 and 67 in any event infringe Article 14 of the Constitution and were on that account void. Counsel relies principally upon that part of the judgment in P. Vajravelu Mudaliar's case, (1965) I SCR 614 = (AIR 1965 SC 1017) which deals with the infringement of the equality clause of the Constitution by the impugned Madras Act. Counsel submits that it is always

open to the State Government to acquire lands for a public purpose of a local authority and after acquiring the lands to vest them in the local authority. If that be done, compensation will be payable under the Land Acquisition Act, 1894, but says counsel, when land is acquired for a public purpose of a local authority under the provision of the Bombay Town planning Act the compensation which is payable is determined at a rate prevailing many years before the date on which the notification under Section 4 of the Land Acquisition Act is issued. The argument is based on no solid foundation. The method of determining compensation in respect of lands which are subject to the town-planning scheme is prescribed in the Town Planning Act. There is no option under that Act to acquire the land either under the Land Acquisition Act or under the Town Planning Act. Once the draft town-planning scheme is sanctioned, the land becomes subject to the provisions of the Town Planing Act, and on the final town-planning scheme being sanctioned, by statutory

operation the title of the various owners is readjusted and the lands needed for a public purpose vest in the local authority. Land required for any of the purposes of a town planning scheme cannot be acquired otherwise than under the Act, for it is a settled rule of interpretation of statutes that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all: Taylor v. Taylor, (1875) I Ch D 426. Again it cannot be said that because it is possible for the State, if so, minded, to acquire lands for a public purpose of a local authority, the statutory effect given to a town-planning scheme results in discrimination between persons similarly circumstanced. In P. Vajravelu Mudaliar's case (1965) I SCR 614 = (AIR 1965 SC 1017) the Court struck down the acquisition on the ground that when the lands are acquired by the State Government for a housing scheme under the Madras Amending Act, the claimant gets much smaller compensation than the compensation he would get if the land or

similar lands were acquired for the same public purpose under the Land Acquisition Act, 1894. It was held that the discrimination between persons whose lands were acquired for housing schemes and those whose lands were acquired for other public purposes could not be sustained on any principle of reasonable classification founded on intelligible differentia which had a rational relation to the object sought to be achieved. One broad ground of distintion between P. Vajravelu Mudaliar's case (1965) I SCR 614 = (AIR 1965 SC 1017) and this case is clear; the acquisition was struck down in P. Vajravalu Mudaliar's case (1965) 1 SCR 614 = (AIR 1965 SC 1017) because the State Government could resort to one of the two methods of acquisition-the Land Acquisition Act, 1894, and the Land Acquisition (Madras Amendment) Act, 1961 - and no guidance was given by the Legislature about the statute which should be resorted to in a given case of acquisition for a housing scheme. Power to choose could, therefore, be exercised arbitrarily. Under

the Bombay Town Planning Act, 1955, there is no acquisition by the State Government of land needed for a town-planning scheme. When the Town Planning Scheme comes into operation the land needed by a local authority vests by virtue of S. 53(a) and that vesting for purposes of the guarantee under Art. 31 (2) is deemed compulsory acquisition for a public purpose. To lands which are subject to the scheme, the provisions of Sections 53 and 67 apply, and the compensation is determined only in the manner prescribed by the Act. There are therefore two separate provisions, one for acquisition by the State Government, and the other in which the statutory vesting of land operates as acquisition for the purpose of town-planning by the local authority. The State Government can acquire the land under the Land Acquisition Act, and the local authority only under the Bombay Town Planning Act. There is no option to the local authority to resort to one or the other of the alternative methods which result in requisition. The contention that the

provisions of Sections 53 and 67 are invalid on the ground that they deny the equal protection of the laws or equality before the laws must, therefore, stand rejected."

18. In the aforesaid judgment an argument was also advanced in respect of validity of section 53 of the said Bombay Town Planning Act, 1954. Section 53 inter alia provided a vesting of the property in the State Government on the town planning scheme being brought into effect. The provisions of section 53 are in pari materia with that of the provisions of section 88 of the said MRTP Act 1966. While dealing with the argument of validity of section 53 and further contention that vesting under section 53 is not a valid vesting because the government cannot expropriate property of a citizen without providing compensation in respect thereof. The Hon'ble Supreme Court in the aforesaid judgment, has held as under :-

"26. The principal argument which found favour with the High Court in holding Section 53 ultra vires, is that when a plot is

reconstituted and out of that plot a smaller area is given to the owner and the remaining area is utilised for public purpose, the area so utilised vests in the local authority for a public purpose, and since the Act does not provide for giving compensation which is a just equivalent of the land exproprited at the date of extinction of interest the guaranteed right under Article 31 (2) is infringed. While adopting that reasoning, counsel for the first respondent adopted another line of approach also. Counsel contended that under the scheme of the Act the entire area of the land belonging to the owner vests in the local authority, and when the final scheme is framed in lieu of the ownership of the original plot, the owner is given a reconstituted plot by the local authority, and compensation in money is determined in respect of the land appropriated to public purposes according to the rules contained in Secs. 67 and 71 of the Act. Such a scheme for compensation is, it was urged, inconsistent with the guarantee under Article 31 (2) for two reasons - (1) that

compensation for the entire land is not provided; and (2) that payment of compensation in money is not provided even in respect of land appropriated to public use. The second branch of the argument is not sustainable for reasons already set out, and the first branch of the argument is wholly without substance. Section 53 does not provide that the reconstituted plot is transferred or is to be deemed to be transferred from the local authority to the owner of the original plot. In terms Section 53 provides for statutory re-adjustment of the rights of the owners of the original plots of land. When the scheme comes into force all rights in the original plots are extinguished and simultaneously therewith ownership springs in the reconstituted plots. There is no vesting of the original plots in the local authority, nor transfer of the rights of the local authority in the reconstituted plots. A part or even the whole plot belonging to an owner may go to form a reconstituted plot which may be allotted to another person, or

may be appropriated to public purposes under the scheme. The source of the power to appropriate the whole or part of the original plot in forming a reconstituted plot is statutory. It does not predicate ownership of the plot in the local authority, and no process - actual or notional - of transfer is contemplated in that appropriation. The lands covered by the scheme are subjected by the Act to the power of the local authority to readjust titles, but no reconstituted plot vests at any stage in the local authority unless it is needed for a purpose of the authority. Even under clause (a) of Section 53 the vesting in a local authority of land required by it is on the coming into force of the scheme. The concept that lands vest in the local authority when the intention to make a scheme is notified is against the plain intendment of the Act."

19. The said provisions of the Town Planning Act once gain came up for consideration before the Apex Court in the case of Prakash Amichand Shah vs.

State of Gujarat and others, reported in AIR 1986 SC 468 wherein the Supreme Court has while dealing with the similar arguments once again examined the provisions of Bombay Town Planning Act, particularly the provisions of sections 53 and 67 to 71 which deals with the Scheme and consequential acquisitions, the Hon'ble Supreme Court has held as under:

> "14. Where the cost of the scheme does not exceed half the increment, the cost shall be wholly met by the contribution of the plot-holders but where it exceeds half the increment, to the extent of half the increment it shall be met by the contribution from plot-holders and the excess shall be borne by the local authority. The rules for levying incremental contribution are set out in section 66 of the Act, referred to above. It is seen that the valuation of the land is done in three stages :-
>
> (i) Original value of the land as on the date of the first notification which does not take

into account any of the effects of the improvement scheme that is to follow.

(ii) Semi-final value, that is the value of the reconstituted plots allotted in their new size and shape but in their original condition, ignoring the benefit from the scheme.

(iii) Final value, that is the enhanced value of the reconstituted plots due to the scheme.

"15. The difference between the first two is the compensation that is due to the owner. The difference between the second and third is the increment of the value of the reconstituted plots that remain with the owner on the completion of the scheme and only 50 per cent of the increment can be recovered from the owner as his increment contribution towards the cost of the scheme and no more. Any excess incurred will have to be met by the local authority from its funds."

16. Section 84 of the Act provides that if at any time the State Government is of the opinion that any land included in a town planing scheme is needed for a public purpose other than that for which it is included in the scheme it may make a declaration to that effect in the Official Gazette in the manner provided in section 6 of the Land Acquisition Act, 1894 and on the publication of such declaration the Collector shall proceed to take order for the acquisition of the land and the provisions of the Land Acquisition Act, 1894, as amended by the Schedule to the Act, as far as may be, shall apply to the acquisition of the said land. Thus it is seen that there are three methods of acquisition of land under the Act which are as under :-

(i) acquisition of land provided in section 11 of the Act for development purposes specified in clauses (b), (c), (d) and (e) of section 7 of the Act for which compensation is payable under the provisions of the Land Acquisition

Act, 1894 as amended by the provisions contained in the Schedule to the Act;

(ii) transfer of lands that takes place on the coming into force of the final scheme under section 53 of the Act for which compensation is payable in accordance with section 67 of the Act; and

(iii) acquisition of land under section 84 of the Act which empowers the State Government to acquire lands included in the town planning scheme at a subsequent stage where again compensation is payable in accordance with the provision of the Land Acquisition Act, 1894 as amended by the Schedule to the Act.

17. These are broadly the features of the Act.

18. The first contention urged by the learned counsel for the appellant is that it being possible in this instant case to acquire the land of the appellant either under the Land

Acquisition Act, 1894 which is more favourable to the owner of the land both from the point of view of the procedural safeguards and from the point of view of the quantum of compensation payable for the lands which includes solatium payable under section 23(2) thereof than the Act which does not provide for appeals against many of the orders passed by the Town Planing Officer under section 32 of the Act and does not authorise payment of solatium in addition to the market value of the land, the acquisition of the land under the Town Planning Scheme under section 53 of the Act is discriminatory and violative of Article 14 of the Constitution which guarantees equality before law and equal protection of the laws. This question is no longer res integra. In Zandu Pharmaceutical Works Ltd. v G.J. Desai, Civil Appeal No. 1034 of 1967 decided on 28th August, 1969 (reported in 1969 UJ (SC) 575) dealing with the very provisions of the Act this Court observed thus :

"When the Town Planning Scheme comes into operation the land needed by a local authority vests by virtue of S.53(a) and that vesting for purposes of the guarantee under Art. 31(2) is deemed compulsory acquisition for a public purpose. To lands which are subject to the scheme, the provisions of Ss. 53 and 67 apply, and the compensation is determined only in the manner prescribed by the Act. There are therefore two separate provisions one for acquisition by the State Government, and the other in which the statutory vesting of land operates as acquisition for the purpose of town planning by the local authority. The State Government can acquire the land under the Land Acquisition Act, and the local authority only under the Bombay Town Planning Act. There is no option to the local authority to resort to one or the other of the alternative methods which result in acquisition. Hence the provisions of Ss. 53 and 67 are not invalid on the ground that they deny equal protection of the laws or equality before the laws."

"19. In order to appreciate the contentions of the appellant it is necessary to look at the object of the legislation in question as a whole. The object of the Act is not just acquiring a bit of land here or a bit of land there for some public purpose. It consists of several activities which have as their ultimate object the orderly development of an urban area. It envisages the preparation of a development plan, allocation of land for various private and public uses, preparation of a Town Planning Scheme and making provisions for future development of the area in question. The various aspects of a Town Planing Scheme have already been set out. On the final Town Planning Scheme coming into force under section 53 of the Act there is an automatic vesting of all lands required by the local authority, unless otherwise provided, in the local authority. It is not a case where the provisions of the Land Acquisition Act, 1894 have to be set in motion either by the Collector or by the Government.

20. The divesting of title takes place statutorily. S.71 of the Act provides for payment of compensation to the owner of an original plot who is not provided with a plot in the final scheme, or if the contribution to be levied from him under S. 66 of the Act is less than the total amount to be deducted therefrom under any of the provisions of the Act. S.73 of the Act provides for payment due to be made to any person by the local authority by adjustment of account as provided in the Act. S. 32 of the Act lays down the various duties and powers of the Town Planning Officer which he has to discharge and exercise for the benefit of the whole community. All his functions are parts of the social and economic planning undertaken and executed for the benefit of the community at large and they cannot be done in isolation. When such functions happen to be integral parts of a single plan which in this case happens to be an urban development plan, they have to be viewed in their totality and not as individual

acts directed against a single person or a few persons. It is quite possible that when statutory provisions are made for that purpose, there would be some difference between their impact on rights of individuals at one stage and their impact at another stage. As we have sen in this very Act there are three types of taking over of lands - first under S. 11, secondly under S. 53 and thirdly under S. 84 of the Act, each being a part of a single scheme but each one having a specific object and public purpose to be achieved. While as regards the determination of compensation it may be possible to apply the provisions of the Land Acquisition Act,1894 with some modification as provided in the Schedule to the Act in the case of lands acquired either under S. 11 or under S. 84 of the Act, in the case of lands which are needed for the local authority under the Town Planning Scheme which authorises allotment of reconstituted plots to persons from whom original plots are taken, it is difficult to apply the provisions of the Land Acquisition

Act, 1894. The provisions of S. 32 and the othr financial provisions of the Act provide for the determination of the cost of the scheme, the development charges to be levied and contribution to be made by the local authority etc. It is only after all that exercise is done the money will be paid to or demanded from the owners of the original plots depending on the circumstances governing each case. If in the above context the Act has made special provisions under Ss. 67 to 71 of the Act for determining compensation payable to the owners of original plots who do not get the reconstituted plots it cannot be said that there has been any violation of Art. 14 of the Constitution. It is seen that even there the market value of the land taken is not lost sight of. The effect of the provision in Ss. 67 to 71 of the Act has been explained by this Court in Maneklal Chhotalal v. M.G. Makwana, (1967) 3 SCR 65: (IR 1967 SC 1373) and in State of Gujarat v. Shri Shantilal Mangaldas (supra)."

20. The argument of the learned counsel for the petitioner that the acquisition under the Land Acquisition Act being more beneficial, the petitioners are entitled to compensation under the Land Acquisition Act by virtue of the provisions of section 126 (2) and (3) of the MRTP Act, 1966 though in a different context was once again considered by the Hon'ble Supreme Court of India in the aforesaid judgment. The reliance is placed by both the learned counsel on a judgment in the case of Nagpur Improvement Trust vs. Vithal Rao reported in AIR 1973 SC 689 also came up for consideration in the aforesaid judgment of P.A. Shah vs. State of Gujarat, reported in AIR 1986 SC 468 and while dealing with the said contention, the Supreme Court has held as under :-

> "34. It was next contended that the denial of the solatium of 15 per cent (or 30 per cent, as the law now is) of the market value of the land in addition to the compensation payable for lands taken by the local authority for purposes of the Scheme makes the Act discriminatory. Reliance is placed on the

decision of this Court in Nagpur Improvement Trust v. Vithal Rao, (1973) 3 SCR 39 : (AIR 1973 SC 689) in which it is held that the different terms of compensation for land acquired under two Acts would be discriminatory. In that case the petitioner was a tenant of some field in a village. He had applied to the Agricultural Land Tribunal under a local Act for fixing the purchase price of the said field. The land in question however was acquired under the Nagpur Improvement Trust Act, 1936. Aggrieved by the said acquisition he filed a Writ Petition in the High Court of Bombay, Nagpur Bench, challenging the validity of the Nagpur Improvement Trust Act, 1936 on various grounds one of the grounds being that the said act empowered the acquisition of the land at prices lower than those payable under the Land Acquisition Act, 1894. He urged that the denial of the solatium at 15 per cent of the market value was discriminatory. The High Court held that as the acquisition was by the State in all cases where the property was

required to be acquired for the purposes of a scheme framed by the Trust and such being the position, it was not open to the State to acquire any property under the provisions of the Land Acquisition Act, 1894 as amended by the Improvement Trust Act, without paying the solatium also. It was therefore held by the High Court that the paragraphs 10(2) and 103) insofar as they added a few Cl. 3(a) to S.23 and a proviso to sub-sec. (2) of S. 23 of the Land Acquisition Act, 1894 were ultra vires as violating the guarantee of Art. 14 of the Constitution. On appeal the judgment of the High Court was affirmed by this Court by the above decision. The provisions under consideration in the above decision corresponds to S. 11 and to S. 84 of the Act, which we are now considering. S. 59 of the Nagpur Improvement Trust Act, 1936 provided that the Trust might, with the previous sanction of the State Government acquire land under the provisions of the Land Acquisition Act, 1894 as modified by the provisions of the said Act for carrying out

any of the purposes of the said Act. But the provisions which are questioned before us are of a different pattern altogether. They deal with the preparation of a scheme fork the development of the land. On the final scheme coming into force the lands affected by the scheme which are needed for the local authority for purposes of the scheme automatically vest in the local authority. There is no need to set in motion the provisions of the Land Acquisition Act, 1894 either as it is or as modified in the case of acquisition under S. 11 or S. 84 of the Act. Then the Town Planning Officer is authorised to determine whether any reconstituted plot can be given to a person whose land is affected by the scheme. Under S. 51(3) of the Act the final scheme as sanctioned by the Government has the same effect as if it were enacted in the Act. The scheme has to be read as part of the Act. Under S. 3 of the Act all rights of the private owners in the original plots would determine and certain consequential rights in favour of the owners

would arise therefrom. If in the scheme, reconstituted or final plots are allotted to them they become owners of such final plots subject to the rights settled by the Town Planning Officer in the final scheme. In some cases the original plot of an owner might completely be allotted to the local authority for a public purpose. Such private owner may be paid compensation or a reconstituted plot in some other place. It may be a smaller or a bigger plot. It may be that in some cases it may not be possible to allot a final plot at all. Ss. 67 to 71 of the Act provide for certain financial adjustments regarding payment of money to the local authority or to the owners of the original plots. The development and planning carried out under the Act is primarily for the benefit of public. The local authority is under an obligation to function according to the Act. The local authority has to bear a part of the expenses of development. It is in one sense a package deal. The proceedings relating to the scheme are not like acquisition proceedings under the

Land Acquisition Act, 1894. Nor are the provisions of the Land Acquisition Act, 1894 made applicable either without or with modification as in the case of the Nagpur Improvement Trust Act, 1936. We do not understand the decision in Nagpur Improvement Trust's case. (AIR 1973 SC 689) (supra) as laying down generally that wherever land is taken away by the Government under a separate statute compensation should be paid under the Land Acquisition Act, 1894 only and if there is any difference between the compensation payable under the Land Acquisition Act, 1894 and the compensation payable under the statute concerned the acquisition under the statute would be discriminatory. That case is distinguishable from the present case. In State of Kerala Vs. T.M. Peter, (1980) 3 SCR 290; (AIR 1980 SC 1438) also S. 34 of the Cochin Town Planning Act which came up for consideration was of the same pattern as the provision in the Nagpur Improvement Trust Act, 1936 and for that reason the Court followed the decision in the Nagpur Improvement Trust's

case (supra). But in that decision itself the Court observed at pages 302 and 303 (of SCR) : (at p. 1446) of AIR) thus:-

"We are not to be understood to mean that the rate of compensation may not vary or must be uniform in all cases. We need not investigate this question further as it does not arise here although we are clear in our mid that under given circumstances differentiation even in the scale of compensation may comfortably comport with Art. 14. No such circumstances are present here nor pressed."

21. In our view the ratio laid down by the Supreme Court in the aforesaid two judgments squarely covers the present case. However, both the learned counsels for the petitioners have contended before us that the said judgments cannot be relied upon in the present case because those judgments arose under the provisions of the old Act and provisions of Old Act, there was no provision similar to section 126 prescribing for payment of compensation by following the Land Acquisition Act, 1894 in

respect of the land sought to be acquired under the Town Planning Scheme. It was thus contended that the ratio laid down in the aforesaid judgment cannot be relied upon for determination of the issues raised in the present petition.

22. In the context of the aforesaid argument we find that both the aforesaid judgments of the Apex Court have been approved and reaffirmed by the Supreme Court while considering the provisions of the MRTP Act, 1966 itself in the case of Laxminarayan R. Bhattad and others vs. State of Maharashtra and Another, reported in (2003) 3 SCC 413. In the said judgment of the Supreme Court a somewhat similar argument was advanced. The petitioner in that case claimed an entitlement of a TDR in lieu of compensation which he was claiming under the provisions of section 126 of the MRTP Act, 1966. While repealing the said argument, the Supreme Court has stated as under :-

> "61. The State while granting sanction could have modified the Scheme prepared by the arbitrator. While doing so it was permissible

for the State to make any modification with the arbitrator's Scheme stating that TDR in lieu of compensation would be granted. Having not said so it is not for the appellant to contend that the State would be bound by its purported directives despite statutory interdicts contained in Sections 86 and 88 of the Act.

"62. In view of our findings aforementioned the third reason assigned by the Corporation must also be upheld. We may notice that the appellant herein has given up the question of applicability of Rule 10 (2) before the High Court. The High Court in its impugned judgment recorded

"we may add that under Rule 10(2) of the DC Rules of 1967, additional FSI in lieu of the compensation was provided in certain cases. There is, however, no dispute that the petitioners were not eligible for grant of additional FSI under the said Rule 10(2) inasmuch as the original plot belonging to the

petitioners or any part thereof did not form part of the final plots which were allotted to them nor were the plots allotted to the petitioners affected by the road."

"63. A legal right to have an additional FSI or TDR can be claimed only in terms of a statute or statutory regulations and not otherwise.

"64. By reason of the provisions contained in Section 88 of the Act, Original Plot NO. 433 vested in the State whereas Final Plot Nos. 694 and 713 became the property of the appellants. Title on the land having been conferred under a statute, it is idle to contend that there is no automatic vesting.

"65. Reliance placed by Mr. Devarajan on State of Gujarat (supra) is misplaced. In that case the question which arose for consideration related to a draft scheme sanctioned by the Government on 17-8-1942 under the Bombay Town Planning Act, 1915. The

Scheme which had commenced under the 1915 Act continued under the Bombay Town Planning Act 27 of 1955. The respondents' land was acquired under the Scheme whereafter the plot was reconstituted into two, one each reserved for the respondent and the local authority respectively. A compensation was awarded for reservation of the said land in the local authority on the basis of market value as on 18-4-1927. The said order having been questioned, construction of Section 53 of the Bombay Town Planning Act came up for consideration. This Court held: (SCC p. 522-23, para 27)

"27. The principal argument which found favour with the High Court in holding Section 53 ultra vires is that when a plot is reconstituted and out of that plot a smaller area is given to the owner and the remaining area is utilised for public purpose, the area so utilised vests in the local authority for a public purpose, and since the Act does not provide for giving compensation which is a

just equivalent of the land exproprited at the date of extinction of interest, the guaranteed right under Article 31(2) is infringed. While adopting that reasoning counsel for the first respondent adopted another line of approach also. Counsel contended that under the scheme of the Act the entire area of the land belonging to the owner vests in the local authority, and when the final scheme is framed, in lieu of the ownership of the original plot, the owner is given a reconstituted plot by the local authority, and compensation in money is determined in respect of the land appropriated to public purposes according to the rules contained in Sections 67 and 71 of the Act. Such a scheme for compensation is, it was argued, inconsistent with the guarantee under Article 31(2) for two reasons -- (1) that compensation for the entire land is not provided; and (2) that payment of compensation in money is not provided even in respect of land appropriated to public use. The second branch of the argument is not sustainable for reasons

already set out, and the first branch of the argument is wholly without substance. Section 53 does not provide that the reconstituted plot is transferred or is to be deemed to be transferred from the local authority to the owner of the original plot. In terms Section 53 provides for statutory readjustment of the rights of the owners of the original plots of land. When the scheme comes into force all rights in the original plots are extinguished and simultaneously therewith ownership springs in the reconstituted plots. There is no vesting of the original plots in the local authority nor transfer of the rights of the local authority in the reconstituted plots. A part or even the whole plot belonging to an owner may go to form a reconstituted plot which may be allotted to another person, or may be appropriated to public purposes under the scheme. The source of the power to appropriate the whole or a part of the original plot in forming a reconstituted plot is statutory. It does not predicate ownership of the plot in the local authority, and no

process -- actual or notional -- of transfer is contemplated in that appropriation. The lands covered by the scheme are subjected by the Act to the power of the local authority to readjust titles, but no reconstituted plot vests at any stage in the local authority unless it is needed for a purpose of the authority. Even under clause (a) of Section 53 the vesting in a local authority of land required by it is on the coming into force of the scheme. The concept that lands vest in the local authority when the intention to make a scheme is notified is against the plan intendment of the Act."

"66. The observation of this Court to the effect that there was no vesting of the original plots in the local authority nor was there any question of transfer of the rights in the reconstituted plots, were made having regard to the arguments made therein that the entire original plot as such vested in the local authority. This Court held that right in the original plot extinguished and the

ownership in the reconstituted plot stood transferred only with the coming into force of the Scheme and not prior thereto. In that case, the Scheme was held to be intra vires Article 31 of the Constitution."

"67. Furthermore in this case the original plot and the reconstituted plot is not the same as was the case in State of Gujarat.

"68. In terms of the provisions of the Act, the statutory vesting took place only upon sanctioning of the Scheme in terms of Section 88 thereof and not prior thereto, wherefor the amount of compensation as determined by the arbitrator would be payable to the appellants."

CONCLUSIONS

23. The contentions of both the learned counsel thus, in our view is squarely answered by the aforesaid three judgments of the Supreme Court which inter alia holds (i) that the scheme of the town Planning under the MRTP Act, 1966 is a scheme

by itself and the provisions of compensation are inbuilt and govern within the said scheme, (ii) the provisions of Town Planning scheme provide for computation of compensation by the Arbitrator, (iii) if a party is aggrieved by such compensation being fixed by the arbitrator such a party has a right of appeal before the Tribunal under the provisions of the MRTP Act, 1966, (iv) on the final scheme being sanctioned by the State Government under section 88 (a), the property vests free of all encumbrances in the State Government and all rights of the original holders in the original plot of land stand extinguished, (v) the rights of the parties are governed by the provisions of the said scheme and cannot be looked into outside the said scheme. However, in view of the further argument advanced by the learned counsel for the petitioner that the first two judgments of the Supreme Court i.e. in the case of State of Gujarat v. Shantilal Mangaldas and others (supra) and Prakash Amichand Shah vs. State of Gujarat and others (supra) being under the provisions of the said Act and are not applicable. We will deal with the aforesaid argument in detail even though in our view the said

argument is directly concluded by the judgment in the case of Laxminarayan N. Bhattad and others. vs. State of Maharashtra and Another (supra).

24. The argument of the learned counsel for the petitioner that the provisions of section 126 also apply to the Town Planning scheme is based on two premises. Firstly, that in the setting of the Scheme and arrangement of the provisions of section 126 appears subsequent to the provisions of Chapter V being Section 59 to 112 providing for the town planning scheme including the provisions of section 88 providing for vesting of the land on the said scheme being sanctioned. It is thus argued that obviously therefore the provisions of section 126 must apply even in respect of the properties which are sought to be acquired under the provisions of the Town Planning Scheme.

. To consider this submission of the learned counsel it is necessary to consider the setting of the provisions of the provisions and the scheme thereof.

. Firstly, Chapter V provides for provisions relating to permission and sanction of the town planning scheme. Section 59 contemplates preparation and contents of the town planning scheme. It provides for various proposals to be specified while drafting a town planning scheme. Under section 61, a Planning authority in consultation with the Director of Town Planning is required to make a draft scheme for the area in respect of which a declaration has to be made. Section 64 of the Act provides for the contents of such a draft scheme. Section 64 (b) of the said Act provides for reservation, acquisition or allotment of land required for the purpose of preparation of the town planning scheme under section 59. It also provides for putting a similar land use for various purposes. Section 65 provides for reconstitution of the plot and also further provides for draft of the scheme to contain various proposals in respect of reconstitution of such plots. This provision also empowers the State Government to provide for transferring ownership of a plot of land under the said scheme. Under section 67, the Government is obliged to invite

objections to the draft scheme and under section 68 the parties are required to sanction the draft scheme. The said draft scheme can be sanctioned by the State Government with or without modification pursuant to the objections received under the provisions of section 67. Once under sub section (3) of S. 67 State Government sanctions the draft scheme then it shall be published for inspection to the various parties as a proposed final scheme. However, the same has not yet been brought into effect because the same is not yet finalised and sanctioned. Under section 69 once a town planning scheme is declared then in that event in respect of the land covered under such scheme, the user is required to be confined to the prescribed user under such town planning scheme. The provision further provide for appointment of an arbitrator under section 72 and requires to determine the various rights of the parties under such town planning scheme. While determining the rights under sub-section (3) of section 72 the arbitrator is required to estimate the value of the original plots as well as final plot and fix the difference between the value between the original and final

plot and such difference is required to be included in the final scheme in accordance with the provisions contained in clause (f) of sub-setion (1) of section 97. The arbitrator is also required to estimate the compensation which will be payable for the loss of the area of the original plot in accordance with the provisions contained in clause (f) of sub-section (1) of section 97. Thus, under section 72 the arbitrator exercises and undertakes the valuation of the original plot, the price of the final plot which will be the market value after taking into account the benefits derived by such final plot holder. Thereafter the provisions of appeal are prescribed under section 74 before the Tribunal. In an event if there is a dispute as to the quantum of compensation fixed by the arbitrator a person can prefer such an appeal. Section 75 provides that a Civil Judge, Senior Division or Principal Judge of the Bombay City Civil Court has to be appointed by the State Government constituting such an arbitral Tribunal. It is thereafter under section 86 a final scheme is required to be sanctioned by the State Government. Section 86 of the MRTP Act, 1966 provides that in a

period of four months from the date of receipt of the final scheme under section 82 of the Act from the Arbitrator that the Government is required to issue a notification in the official gazette sanctioning the said final scheme and only on such sanction being granted the said final town planning scheme comes into operation and consequently under section 88 the property vests in the State Government absolutely and free of encumberances. In our view, the scheme of theAct in so far as pertains to Town Planning Scheme are concerned falls into three parts: (i) draft town planning scheme, (ii) proposed final town planning scheme and (iii) Sanctioned town planning scheme. In our view, the scheme of the Act further indicates that the provisions of town planning scheme contained in Chapter V of the Act is a self-operative complete scheme by itself. It is like a self contained code. Thus, for the purpose of the compensation in respect of plots of land covered under the scheme and reserved or utilised for the public purpose under the scheme the respondents are liable to resort to the provisions of S.126 of MRTP Act, 1966 and consequently acquire the same under Land

Acquisition Act, 1894. The words 'town planning scheme' used under the provisions of sub-section (2) of section 126 is in respect of the town planning scheme which is yet not become final and sanctioned in exercise of power under section 86 by the State Government though published as final scheme for inviting objections under S. 67 of the MRTP Act, 1966. Thus, the provisions of Section 126 (2) providing for acquisition of the land will apply prior to the said town planning scheme is finally sanctioned under the provisions of Section 86 of the said Act of 1966. The said provisions are provided for as enabling provisions because if the planning authority desires to acquire the land under section 88 (c) then such an enabling power is provided for by virtue of sub section (2) of section 126 of the said MRTP Act, 1966. On such exercise under S.126 of power the planning authority can acquire a land even before the final scheme is sanctioned under provision of Sc. 86 of the Act. These enabling provisions are provided for to take into an amergent eventualities where due to exigencies the State Government cannot wait till completion of entire procedure prescribed

under Chapter V and land is required for any urgent public purpose. Once such a method is applied then in that event the land will be acquired by applying section 126 (2) of the said Act read with section 6 of the Land Acquisition Act. It is so because unless the final town planning scheme is sanctioned the property does not vest in the State Government under section 88 (a) of the Act. Once the town planning scheme is finally sanctioned under section 96 and compensation is finally determined by the decision of the Arbitrator and the property vests under the provisions of section 88 in the State Government, the question of resorting thereafter to a further acquisition under section 126 (2) in our opinion would not arise. We are of the further opinion that if the provisions of section 126 (2) are read as an additional requirement in chapter V providing for town planning scheme then in that event even after the vesting of the land in the State Government under section 88 the State Government will have to resort to acquisition proceedings under section 126 (2) of the said MRTP Act 1966. In our opinion, such a construction of the scheme would be an absurd interpretation and

make the whole scheme of the town planning meaningless.

. We are inclined to hold so for one more reason i.e. the provisions of section 72 provides for computation of compensation. Though the method of computation of compensation is different than what is prescribed and provided for under the Land Acquisition Act. Under Section 72 of the MRTP Act, 1966, a method compensation which is provided for is that the original plot holder surrenders his plot in the said town planing scheme. The market value of the said plot of land is computed. The said town planning provides for improvement and betterment in respect of the said land. Thus, the betterment charges which are spent on the improvement of the town planning scheme are also required to be computed. Therefore, the reconstituted plots which are allotted to the original plot holders have to be computed on the basis of the potential market value of such developed land. The difference between the two is claimed as and by way of betterment charges by the State Government. In an event where a person in

reconstitution of the plot receives a smaller plot of land then in that event his loss is taken care of while computation of compensation under section 72 of the Act. It is because the market value of the original plot which is surrendered is taken into consideration for computation while arriving at the final amount payable or receivable under the scheme. The entire plot of land which he was holding prior to its surrender is considered for computation of compensation though on the basis of market value of undeveloped land. Simultaneously the market value of the reconstituted plot which is allotted in lieu of original plot of land is taken into consideration while determining the amount of compensation payable to him, if any. Thus, the difference is arrived at which takes into consideration (i) the potential higher value of the land in new scheme and secondly it takes into consideration the loss of area of the owner of the property under the scheme. These two effects are thereafter set off and plus or minus figures are arrived at by the Arbitrator which are either payable by the State Government to the plot holder or it has to be paid by the plot holder to the

State Government. Once such computation of a compensation is prescribed under section 72 of the Act itself, we fail to see how once again compensation has to be computed by resorting to section 126 (2) read with the provisions of the Land Acquisition Act. Therefore, we are of the view that the provisions of section 126 can only apply when the scheme is still not sanctioned and the compensation of the arbitrator is either yet not arrived at or if arrived at it is not yet accepted by the State Govt. by granting a sanction to the town planning scheme as a final town planning scheme under the Act. We are, therefore, of the view that the contentions raised by both the learned counsel for the petitioners pertaining to the interpretation of section 126 of the said Act of 1966 is incorrect and erroneous. We hold that in cases where town planning scheme is already sanctioned and the property vests in the State Government under section 88 (a) of the said Act, the question of resorting to section 126 (2) of the said Act of 1966 cannot and does not arise.

25. Both the learned counsel for the petitioners

thereafter contended before us that the vesting prescribed under section 88 (a) is not an absolute vesting but a conditional vesting or subject to the obligation on the part of the State Government to make payment of the compensation under section 126 (2) of the MRTP Act, 1966. In support of the aforesaid argument, the learned counsel placed reliance on the judgment in the case of The Fruit & Vegetable Merchants Union v. The Delhi Improvement Trust reported in AIR 1957 SC 344 where the word 'vesting' has been interpreted stating that vesting may vest in title, or it may vest in possession, or it may vest in a limited sense as indicated in the context in which the said word "vest" is used. The next judgment which is relied upon in support of the aforesaid argument is in the case of Maharaj Singh v. State of Uttar Pradesh and others, reported in AIR 1976 SC 2602. While considering the provisions of section 117 (1) of the U.P. Zamindari Abolition and Land Reforms Act the Apex Court has considered the word 'vesting' in the said judgment meaning thereby that vesting may import a qualified disposition confined to the right to full possession and enjoyment so long as it lasts. The

learned counsel has thereafter relied upon the judgment of the Supreme Court in the case of Municipal Corporation of Greater Bombay and others vs. Hindustan Petroleum Corporation and another, reported in (2001) 8 SCC 143. It has been contended that the aforesaid judgment of the Apex Court in fact approves the ratio of the earlier judgment of the Supreme Court in the case of The Fruit & Vegetable Merchants Union (supra) and thus in the present case also it should be held that the vesting contemplated under section 88 is not a complete and total vesting but only limited vesting subject to the right of the petitioner to receive compensation under section 126 which is also an obligation of the State Government for acquisition of the land. While considering the aforesaid judgment of the Supreme Court in Municipal Corporation of Greater Bombay (supra). The Supreme Court in paragraph 8 after taking survey of the series of the judgments of the various Courts including that of a Court of Appeal in the case of Richardson v. Robertson (1862) 6 LT 75 it has been held as under:-

"8. It is no doubt true that Section 220 provides that any drain which vests in the Corporation is a municipal drain and shall be under the control of the Corporation. In this context, the question arises as to what meaning is required to assign to the word "vest" occurring in Section 220 of the Act? In Richardson v. Robertson 6 LT at p. 78, it was observed by Lord Cranworth as under: (LT p. 78).

"The word 'vest' is a word, at least, of ambiguous import. Prima facie 'vesting in possession is the more natural meaning. The expressions 'investiture' -- 'clothing' -- and whatever else be the explanation as to the origin of the word, point prima facie rather to the enjoyment than to the obtaining of a right. But I am willing to accede to the argument that was pressed at the Bar, that by long usage 'vesting' originally means the having obtained an absolute and indefeasible right, as contradistinguished from the not having so obtained it. But it cannot be

disputed that the word ’vesting’ may mean, and often does mean, that which is its primary etymologial signification, namely, vesting in possession."

"9. In Hinde v. Chorlton 2 CP at p. 116, Wiles J. while interpreting the word "vest" occurring in a local Act, held thus:-

"... ’vest’ did not convey a freehold title but only a right in the nature of an easement. ... there is a whole series of authorities in which words, which in terms vested the freehold in person appointed to perform some public duties, such as canal companies and boards of health, have been field (sic) satisfied by giving to such persons the control over the soil which was necessary to the carrying out of the objects of the Act without giving them the freehold. "

10. In Coverdale v Vharlton the Court of Appeal while considering the provisions of the

Public Health Act, made the observations as under :

" What then is the meaning of the word 'vest' in this section? The legislature might have used the expression' transferred' or 'conveyed' but they have used the word 'vest. The meaning I should like to put upon it is that the street vests in the local board qua street ; not that any soil or any right to the soil or surface vests but that it vests qua street. "

11. In Brown (a lunatic) Re it was held that the word "vest" in Section 134 of the Lunacy Act, 1890 (53 and 54 Vict. c.5) included the right to obtain and deal with without being the actual owner of the lunatic's personal estate.

12. In the case of Finchley Electric Light Co v.Finchley Urban District Council Romer, I.J. while interpreting Section 149 of the Public Health Act (supra) observed as follows:

" Now, that section has received by this time an authoritative interpretation by a long series of cases. It was not by that section intended to vest in the urban authority what I may call the full rights in fee over the street as if that street was owned by an ordinary owner in fee having the fullest rights both has to the soil below and as to the air above. It is settled that the section in question was only intended to vest in the urban authority so much of the actual soil of the street as might be necessary for the control, protection and maintenance of the street as a highway for public use."

26. After the survey of the aforesaid judgments, the Supreme Court has held as under :-

" 15. We are therefore, of the view that the word "vest" means vesting in title, vesting in possession or vesting in a limited sense as indicated in the context in which it is used in a particular provision of the Act.

27. Thus, the meaning of the word ’vest’ has to be ascertained on the basis of the setting in which it is used and the context in which it is provided under the provisions of a particular statute. In our view, the provisions of section 88 provide for a total and complete vesting and de hors of any right, title and interest in favour of any of the original plot holders. This is so because the provisions of section 88 (a) provides for a vesting absolute and free of all encumbrances. It would not be out of place to state that the word ’vesting’ in light of section 88 of the MRTP Act, 1966 itself also came up for consideration in the case of Laxminarayan R. Bhattad and others. vs. State of Maharashtra and another (supra) in which also the Supreme Court while considering the provisions of the said MRTP Act, 1966 section 88 held that vesting under section 88 is absolute and free of all encumbrances and no right survives of any party in respect of the original plot of land once the final town planning scheme is sanctioned under section 86 of the said MRTP Act, 1966.

28. This now leads us to the two alternate submissions which are placed independently by two learned counsels in their respective petitions. The learned counsel for the petitioner in Writ Petition No. 510 of 1991 has contended that the State Government was duty bound to acquire the land by virtue of resorting to the provisions contained under the development plan and could not have resorted to the same under town planning scheme. In support of the aforesaid argument, the learned counsel for the petitioner in the said writ petition no. 510 of 1991 has relied upon the judgment of one of us sitting singally (A.P. Shah, J.) in the case of Bandra Cecelia Co-operative Housing Society Ltd., and another vs. State of Maharashtra and others, reported in 1996 (2) Mh.L.J. 550 and has contended that once there is a reservation under the development plan then in that event the same should be acquired thereunder and not under the town planning scheme. In our view, reading of the said judgment it is clear that it does not lay down any such proposition of law as sought to be advanced. On the contrary, paragraph 5 of the judgment negatives the argument which has

been advanced by the learned counsel. The said paragraph 5 reads as under :-

> "Now Section 39 on which heavy reliance is placed by the petitioner is as follows :
>
> " 39. Variation of town planning scheme by development plan - Where a final development plan contains proposals which are in variation, or modification of those made in a town planning scheme which has been sanctioned by the State Government before the commencement of this Act the Planning Authority shall vary such scheme suitably under section 92 to the extent necessary by the proposals made in the final Development Plan. "
>
> The section provides that if it is noticed that the final development plan contains proposal which are in variation or modification of those in a Town Planning Scheme which has already been sanctioned by the State Government before commencement of

then MRTP Act, the planning authority shall be duty bound to vary such scheme suitably under section 92 to the extent necessary by the proposal made in the final development development plan. The legislative intent in enacting this section is to create the planning scheme as per the requirement of the final development plan so that the Town Planning Scheme which has already been sanctioned prior to the coming into force of the Act shall be brought on par with the final development plan. Thus section 39 does not create any impediment in reserving a land in the Development Plan for a purpose other than the one designated under the Town Planning Scheme but it merely provides that the planning authority should take steps to make suitable changes in the Town Planning Scheme under section 92 in order to remove inconsistency if any in the final development plan and the Town Planning Scheme which has been sanctioned prior to the commencement of the MRTP Act."

29. We thus do not find any merit in the contention of the learned counsel for the petitioner that once there is a reservation in the development plan it cannot also be reserved under the town planning scheme. From the Scheme of the Act we find that if there is a reservation under the town planning scheme then a similar reservation is required to be provided for under the town planning scheme. On the contrary, section 39 of the said Act of 1966 provides that where there is variation between the town planning scheme and the final development plan, then there should be modification in the scheme so as to bring both in conformity with each other. In the present case, both the reservations in the town planning scheme and development plans are identical and we do not see any variance thereto. We are, therefore, of the view that the contention raised by the learned counsel for the petitioner in that behalf is without merit and is liable to be rejected.

30. As far as the last contention raised by the learned counsel for the petitioner in writ petition no. 6423 of 1996 is concerned, we find that the

said contention is without any merits. It is no doubt true that the land belonging to the petitioner was acquired for road under the town planning scheme whereas parallel road falling under the said scheme was acquired by the State Government under the Land Acquisition Act by resorting to provisions under section 126 of the said Act of 1966. The respondents have filed an affidavit in reply and have pointed out that source of the plots in the town planning scheme were having no access and, therefore, it was urgently required to provide for access, however the owners of the said final plots namely being plot nos. 485, 486 and 485D/1 were not ready and wiling to hand over the land and the finalisation and sanctioning of the final town planning scheme was likely to take a long period of time. In the aforesaid circumstances the State Government has resorted to the provisions of Land Acquisition Act, 1894 pending the finalisation of the scheme under s. 86 of the MRTP Act, 1966. No doubt the plot of the petitioner i.e. plot no. 486 was forming part of the town planning scheme and the same was not urgently required to be taken and therefore State

Government did not exercise power under s. 126 (2) of the MRTP Act, 1966 and permitted the said plot to be part of the final town planning scheme and the same is taken over under the final town planning scheme when sanctioned. In light of the aforesaid position and in light of the view which we have taken in respect of section 126 (2) of the MRTP Act, 1966, we are of the view that this alternate contention raised by the petitioner in support of the aforesaid argument is also without merit and liable to be rejected.

31. In the aforesaid circumstances, we hold that the provisions of section 126 (2) are not applicable in so far as the final sanctioned town planning scheme is concerned. However, if the respondent desires to acquire the land prior to the final town planning scheme sanctioned under the provisions of section 86 read with the provisions of section 88 of the MRTP Act, 1966 then in that event it will be open to the respondents to resort to the provision of sc. 126 (2) of the MRTP Act, 1966.

. We further hold that a person whose plot is vested in the Government under section 88 (a) of the town planning scheme being sanctioned scheme cannot thereafter seek an additional compensation by relying upon provisions of section 126 (2) of the MRTP Act of 1966 and his rights including that of receipt of compensation for an area of his plot lost are governed by the final sanction town planning scheme particularly on the basis of the computation of the compensation quantified by the arbitrator under section 74 read with right of appeal under section 74 of the said Act of 1966.

32. In the aforesaid circumstances, we find no substance in the arguments advanced by the learned counsel for the petitioners in both the petitions. We, therefore, dismiss both the writ petitions. However, there shall be no order as to costs.

(A.P.SHAH, J.)

(S.U.KAMDAR, J)